IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

WP(C).No. 34355 of 2006(M)

PETITIONER:

PUTHIYONAN REEJA, W/O. BALARAMAN,
AGED 38, NO OCCUPATION, SARASWATHY SADANAM,
PAZHASSI AMSOM, MATTANNUR DESOM, THALASSERY TALUK.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS:

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1. THE MATTANNUR MUNICIPALITY,
REPRESENTED BY THE SECRETARY,
MATTANNUR MUNICIPALITY, MATTANNUR,
KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.D.GANESH KUMAR
R2 BY GOVT.PLEADER SMT.T.B.RAMANI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.34355 OF 2006

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DATED THIS THE 15TH FEBRUARY, 2007

J U D G M E N T

Petitioner is the owner of a building which is situated within the limits of the 1st respondent-Mattannur Municipality. According to her, the Municipality was a Panchayat till 20.4.1994. The petitioner came to have ownership over the property upon which the building is constructed under Exts.P1 and P2 deeds. The construction was started way back in 1988 and at the time when Exts.P1 and P2 were executed, structural work of the building was completed. The work of the ground floor was actually completed and even assessed by the Panchayat to property tax. After acquiring ownership over the property, the petitioner proceeded with further constructions so that the building can be let out for rent. In May, 1996 she constructed a well, septic tank etc. in the property. She installed additional pillars for the purpose of strengthening the western wall of the building. The well and septic tank were constructed beneath the ground floor. The petitioner points out that in Mattannur Panchayat, the Kerala Building Rules were not applicable. But later the area of the Mattannur Panchayat was declared as Municipality with effect from 20.4.1994 and Ext.P3 is the Gazette notification issued in that regard. But within one month of

Ext.P3, the Government issued Ext.P4 notification declaring that the territorial area comprised in the Mattannur Municipality will be Mattannur Village for the purpose of Part-IX of the Constitution of India. Further, Ext.P4 is dated 30.6.1994. On the same day, as per Ext.P5 notification, the Mattannur Municipal area was withdrawn from the operation of the Kerala Municipalities Ordinance, 1994. On the same day, the Government issued yet another notification Ext.P6 constituting the Mattannur Grama Panchayat with effect from 1.7.1994. As per Ext.P7 G.O., the Taluk Panchayat Officer was appointed as the Special Officer of Mattannur Grama Panchayat with effect from 1.7.1994 and the petitioner claims that the Taluk Panchayat Officer assumed charge and was lawfully functioning as Special Officer of the Mattannur Panchayat. The petitioner has produced Ext.P8, copy of yet another G.O. issued on 30.6.1994 itself by which the entry against Sl.No.6 (relating to Mattannur Municipal Council) in the Schedule to the notification issued under G.O.(MS) No.108/94/LAD dated 16.5.1994 published as S.R.O.No.652/94 was cancelled. It is contended that on account of Ext.P8, the Municipal Council became non est. It is pointed out that though Exts.P4 to P8 were challenged by one N.Mukundan describing himself as Ex-

Chairman, Advisory Council, Mattannur Municipality by filing O.P.No.9013 of 1994 before this Court, this Court was not inclined to pass an injunction restraining the Special Officer from functioning as Special Officer of the Panchayat. This Court on 4.7.1994 passed an order directing maintenance of status quo as on 4.7.1994. Exts.P4 to P8 were not stayed by this Court at all. Ext.P9 is copy of the order dated 4.7.1994 passed in O.P.No.9013 of 1994. Ext.P10 is the order passed by this Court on 27.7.1994 in that O.P. by which this Court clarified that the Officer who is in actual charge may decide his functions. It is pointed out that this Court did not express anything as to who was the Officer actually discharging the functions on 4.7.1994 or 27.7.1994. Thereafter, by Ext.P11 judgment O.P.9013 of 1994 was dismissed by this Court as infructuous, recording an affidavit submitted by the Government that the Government has decided on 5.6.1996 to declare Mattannur as a Municipality. Thereafter, the Government issued Ext.P12 G.O. dated 11.11.1996. By this G.O., the Government cancelled Exts.P4 to P8 and revived Ext.P3 and other connected notifications forming Mattannur Municipality. The petitioner contends that it is evident that Mattannur Municipality came into existence for the second time only with effect from 11.11.1996, the

date of Ext.P12. In short, the contention is that during the period of execution of Ext.P1 document and till 11.11.1996, the area where the petitioner's building is situated was not within the Municipality and hence not within the province of the Kerala Building Rules, 1984. On 4.4.1997 the Special Officer of the Mattannur Municipality issued Ext.P13 notice to Mr.T.Balaraman, husband of the petitioner directing him to furnish details regarding the incomplete building in the attached proforma. The petitioner takes exception to the statement in Ext.P13 that the area was a Panchayat till 1.4.1990. Her husband furnished Ext.P14 details pursuant to Ext.P13. The petitioner submits that there was some estrangement between her and her husband who resided separately for five years. But now they have rejoined and are residing together. On 4.8.1999, the 1st respondent-Municipality has served the petitioner with an order dated 27.7.1999, copy of which is produced as Ext.P15. In Ext.P15 it is alleged that the building to an extent of 45 cms. of width on the western side on the ground floor and to an extent of 70 cms. of width on the first floor and also the well in the property are unauthorised constructions and there is a direction to the petitioner to demolish those parts of the building within 24 hours of receiving the order. Apart from Ext.P15, Ext.P16 show-cause

notice was also issued to the petitioner. In Ext.P16 also, only 24 hours' time is given to show cause. To Exts.P15 and P16, the petitioner submitted reply by registered post denying that any construction has been made unauthorisedly. It is contended in the reply that the entire structure was constructed prior to June, 1996 and no new construction was effected subsequent to June, 1996. Ext.P17 is the reply. Even before Ext.P17 reply reached the 1st respondent, the 1st respondent issued another order to the petitioner on 5.8.1999. Copy of that order is Ext.P18. In Ext.P18 it is alleged that further unauthorised constructions have been made on the second floor and the petitioner is directed to demolish the said construction also. To Ext.P18 the petitioner sent Ext.P19 reply dated 9.8.1999. In response to Ext.P18, the petitioner appeared before the 1st respondent on 10.8.1999. But the 1st respondent was not in a mood to hear the petitioner at all. The 1st respondent threatened that he will pass appropriate orders by making the preliminary orders absolute. She filed O.P.20738 of 1999 before this Court impugning Ext.P15, P16 and P18 orders. That O.P. was disposed of by this Court by Ext.P20 judgment. Under Ext.P20, the 1st respondent was directed to hear the matter at 3 p.m. on 6.10.1999 and the petitioner was directed to be

present for hearing. Pursuant to Ext.P20, a hearing was conducted and Ext.P21 order dated 11.10.1999 was issued by the 1st respondent. Against Ext.P21, she preferred Ext.P22 appeal before the 2nd respondent-Government. But since the Tribunal for Local Self Government Institution was formed in the meanwhile, Government transferred Ext.P22 appeal to the Tribunal which numbered the appeal as Appeal No.376 of 2005. Without prejudice to the petitioner's contentions in the appeal and in view of the change in law regarding regularisation of unauthorised constructions, petitioner submitted two applications before the 1st respondent on 29.3.2000 and 31.10.2000 for regularisation of the constructions. The Tribunal disposed of the appeal by Ext.P23 order. The Tribunal directed the 1st respondent to forward the applications for regularisation to the District Town Planner in compliance with the relevant rule, if payment of fee is made by the petitioner within 15 days from the date of the order. The contention of the petitioner that Building Rules were not applicable and therefore the constructions are not unauthorised ones was turned down. The petitioner's counsel could receive copy of Ext.P23 only on 12.9.2006 from the Tribunal. Therefore, Ext.P24 request was made to the 1st respondent on 18.9.2006 to intimate the amount of fee to be remitted

to the Municipality for pursuing the applications for regularisation. Ext.P24 application was kept aside by the 1st respondent on the ground that copy of the order had not been received by the Municipality from its counsel. Thereafter, Ext.P25 was issued to the petitioner by the 1st respondent informing her that her application cannot be considered as the same is filed out of time. Thereafter, Ext.P26 order was issued by the 1st respondent commanding the petitioner to demolish the building within seven days and threatening that the building will be demolished if the same is not done. Making these averments, the petitioner has raised various grounds and filed this Writ Petition seeking quashment of the entire proceedings (No.E2-6917/99) on the file of the Secretary of the Mattannur Municipality including Exts.P15, P16, P18 and P21 issued by the 1st respondent and Ext.P23 order passed by the Tribunal and all other proceedings initiated thereafter including Exts.P25 and P26.

2. The 1st respondent-Municipality has filed a very detailed counter affidavit denying each and every averment and the claims made by the petitioner.

3. Learned counsel appearing for the parties—Sri.R.Surendran for the petitioner, Sri.D.Ganesh Kumar for the 1st respondent-

Municipality and Smt.T.B.Remani, Government Pleader for the 2nd respondent-State—have addressed me in detail. Sri.Ganesh Kumar and Smt.Remani would support Ext.P23 order of the Tribunal. Sri.Ganesh Kumar in particular would support Exts.P25 and P26 also since according to the learned counsel the Tribunal had set a time-frame of 15 days for rectifying the defects which had been noted in the regularisation application. Sri.Surendran would draw my attention to the various documents placed on record, particularly various notifications and Government Orders and Exts.P9 and P10 orders of this Court to contend that at the time when the constructions were being made, Mattannur remained as a Panchayat not covered by the Kerala Building Rules, 1984.

4. Notwithstanding the very persuasive submissions of Mr.Surendran, I am not able to accept his stand that at the time when the objected constructions were made, Mattannur remained as a Panchayat. On going through the order of the Tribunal Ext.P23, I find that this aspect of the matter has been carefully considered by the Tribunal which has given cogent reasons to turn down the petitioner's case in this regard. I do not find any warrant to interfere with the said finding under Article 226 of the Constitution of India. But, at the

same time, I notice that the nature of the unauthorised constructions put up by the petitioner are such that the Government may be justified in regularising them. In fact, the Tribunal was also of the view that the Government shall consider those applications and granted 15 days' time to the petitioner for curing the defects which had been noted on those applications, i.e., defect regarding court fee. The petitioner however did not rectify the defects within the stipulated time as a result of which Exts.P25 and P26 have now come to be passed. Considering the totality of the circumstances which attend on this case and the nature of the unauthorised constructions, I am of the view that the petitioner should be given another chance to pay the requisite fee under Rule 4 of the Kerala Buildings (Regularisation of Unauthorised Construction and Land Development) Rules, 1999 in connection with her applications dated 29.3.2000 and 31.10.2000 for regularisation.

The Writ Petition accordingly will stand disposed of with the following directions:-

If the petitioner remits the required fee under Rule 4 of the Kerala Buildings (Regularisation of Unauthorised Construction and Land Development) Rules, 1999 in connection with her applications dated 29.3.2000 and 31.10.2000 within 10 days of her receiving copy of this

judgment, the 1st respondent shall forward those applications to the District Town Planner in compliance of Rule 5 and further action will be taken in the matter by the 1st respondent only on the basis of the decision to be taken by the Government on those applications. The Government will also take a decision in a time-bound manner and at any rate within two months of receiving the regularisation applications for consideration.

(PIUS C. KURIAKOSE, JUDGE)

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